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A.05-08-021/I.06-03-001

Correspondence with Water Division Regarding
San Gabriel Valley Water Company's Collection From
Developers of Deposits for Anticipated Facilities Fees

SAN GABRIEL VALLEY WATER COMPANY

January 26, 2007

U337W

Mr. Fred Curry, Chief
Water Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Re: January 18, 2007 Telephone Call
Concerning Your Letter to Kendall H. MacVey

Dear Fred:

This is a follow-up to our telephone discussion about your January 4, 2007 response to Kendall H. MacVey's complaint on behalf of Sierra Lakes Marketplace, LLC against San Gabriel Valley Water Company ("San Gabriel") regarding a pending Commission requirement that San Gabriel impose a facilities fee on developers in its Fontana Water Company division.

ALJ Barnett's draft preliminary decision in A.05-08-021 ("Draft Decision") issued on June 23, 2006, would require San Gabriel to impose facilities fees on developers to pay for utility infrastructure beyond the costs normally required by Rule 15. Anticipating that a final decision was imminent, San Gabriel began including the applicable facilities fee in cost estimates and deposits for contracts where Rule 15 would apply and the completion of the project would likely be after the effective date of the decision. The facilities fee is easily determinable and Rule 15 requires that all *estimated* costs be deposited before a project begins. San Gabriel believes that if the facilities fees are not included in the Rule 15 deposit, they may not be collectible at a later date. The facilities fee in the draft decision increases the developer's cost substantially and in all fairness should not be sprung on them after they have completed financing arrangements for their project.

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In the case of Sierra Lakes Marketplace LLC, San Gabriel included the facilities fee in the cost estimate provided to the developer. The developer contacted San Gabriel and explained that the project would be completed within about ten days, well before the facilities fee could become effective. As a result, San Gabriel removed the estimated facilities fees from the required deposit. Since then, the Sierra Lakes Marketplace project has been completed and the amount of the deposit (which did not include facilities fees) has been adjusted to actual costs.

I believe you stated that developers should not be charged the facilities fee under Rule 15 and that any facilities fee should be tied to a Will Serve Letter, or when an individual homeowner applies for service. If that is Water Division's view, we hope to have an opportunity to be more persuasive in explaining our concerns.

As I explained, San Gabriel's understanding of the draft preliminary decision and now the draft preliminary alternate decision is that the facilities fee should be collected from developers. Even so, the language in both draft preliminary decisions could benefit from some clarification. Once the proposed decisions are issued for formal comment, San Gabriel will request that the final decision include language providing more direction concerning the application of the facilities fee.

San Gabriel continues to believe that it should estimate the facilities fees in its Rule 15 cost estimates for projects that clearly will not be completed before the facilities fee becomes effective. Of course, San Gabriel will return all portions of the deposit related to estimated facilities fee if projects close before the facilities fee becomes effective. However, if Water Division believes that San Gabriel should not do so, we will not do so. Even so, we would appreciate Water Division's written guidelines on how to proceed including collection procedures, in the event that the facilities fee applies to a specific project where San Gabriel has no Rule 15 deposit.

Very truly yours,



David M. Batt
Vice President and Treasurer

DMB:jp

STATE OF CALIFORNIA

TJR
ARNOLD SCHWARZENEGGER, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



January 4, 2007

Kendall H. MacVey
BEST, BEST, & KRIEGER, LLP
3750 University Avenue
RIVERSIDE CA 92502-1028

Dear Mr. MacVey:

This is in response to your letter of December 29, 2006. In that letter you state you wish to file a complaint against the San Gabriel Valley Water Company (San Gabriel or the company) because San Gabriel is attempting to impose a Facilities Fee before hooking up the Sierra Lakes Marketplace, LLC (you include a letter from Fontana Water Company to Sierra Lakes Marketplace, LLC, dated November 3, 2006) and impose new service connections (you include a schedule titled "Deposit or Estimated Cost for New Services," effective 8/21/2006) to the City of Fontana.

You then go on to decry the use San Gabriel has made of funds it has received "from third parties." You state that (this) "attempt to collect unauthorized fees raises additional issues about it practices in dealing with funds obtained from third parties."

You state that the City believes that San Gabriel has no legal basis to impose a facilities fee at this time. You also express concern about how such fees are collected and how the accrued interest is accounted for. You indicate that San Gabriel may have illegally collected some Facilities Fees and wonder how they will be returned. You connect what you describe as "blatantly illegal" collection of Facilities Fees with serious accounting issues by San Gabriel. You then request an investigation by the Commission.

My response to you is that there is no need to file a complaint at this time. Simply ask San Gabriel to show you the tariff sheet that authorizes any charge the company seeks to impose. If there is no tariff sheet, the charge cannot be imposed by San Gabriel.

If you have any further questions, I can be reached at (415) 703-1739 or flc@cpuc.ca.gov.

Very truly yours,

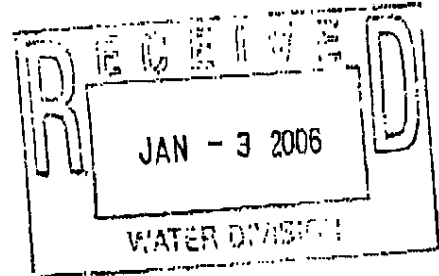
FRED L. CURRY, Chief
Water Branch
Water Division

Cc: - San Gabriel Valley Water Company
Sierra Lakes Marketplace, LLC

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Kendall H. MacVey

December 29, 2006

Fred L. Curry, Program Manager
Water Advisory Branch
Water Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102Re: San Gabriel Valley Water Company

Dear Mr. Curry:

My firm represents City of Fontana, which is a party to Application 05-08-021, a rate case proceeding involving the Fontana Division of San Gabriel Valley Water Company.

The City of Fontana wishes to file a complaint regarding San Gabriel Valley Water Company.

In the proceeding for Application 05-08-021, the City proposed that a facilities fee be imposed on new connections to help fund water infrastructure projects triggered by new development in the Fontana Division. The City's purpose in making this proposal was to reduce increases in ratebase. In June 2006 Judge Barnett circulated a preliminary draft decision (not a proposed decision) for which he requested technical input from San Gabriel Valley Water Company and the Division of Ratepayer Advocates in preparing technical appendices. In that preliminary draft decision Judge Barnett also tentatively indicated that a facilities fee should be imposed with the amount subject to his request for technical input. No proposed decision or final decision has yet been issued in this proceeding.

The City is supportive of an appropriate facilities fee. However, no such fee has been approved by the Commission or even offered for comment in a proposed decision. Nevertheless, San Gabriel Valley Water Company is demanding that developers and the City now pay such a fee for new connections.

BEST BEST & KRIEGER
ATTORNEYS AT LAW

Fred L. Curry, Chief
December 29, 2006
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Enclosed is a November 3, 2006 letter from Fontana Water Company (the relevant division of San Gabriel Valley Water Company) to Sierra Lakes Marketplace, LCC asking for payment of a \$53,350 fee based on the "expectation" that such a fee will be imposed by the Commission.

Fontana Water Company has also asked that the City of Fontana pay a facilities fee for new connections (see enclosed a fee schedule dated August 21, 2006 that the City recently received from Fontana Water Company in making this request).


The City in this and other rate proceedings has already raised the issue as to whether San Gabriel Valley Water Company has failed to properly account for funds it has received from third parties. The Commission granted the City's motion for an audit of such proceeds. The Water Division prepared an audit report that concluded that \$27,000,000 should be returned to ratepayers. That report is the subject of the on-going proceeding in which the facilities fee issue was also raised by the City. San Gabriel Valley Water Company's attempt to collect unauthorized fees raises additional issues about its practices in dealing with funds obtained from third parties.

The City believes that San Gabriel Valley Water Company has no legal basis to impose a fee on the City or others when no such fee has been authorized by the Commission. It is concerned about how any collected fees and accrued interest are to be accounted for. It is concerned about how any fees are to be returned if the fees have been illegally collected. The City is concerned that San Gabriel Valley Water Company's attempt to collect these fees is blatantly illegal and symptomatic of serious accounting issues that the Company's practices continue to raise.

We request that an investigation in response to this complaint be undertaken and that appropriate corrective action be taken.

If you need further information or have any questions, please do not hesitate to call.

Sincerely,


Kendall H. MacVey
of BEST BEST & KRIEGER LLP

KHM:faw